

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:	)	Docket No.: HWCA 20030259.
	)	
Traynor's Painting and Decorating, Inc.,	)	CONSENT ORDER
Robert B. Traynor,	)	
1105 Woodglen Court	)	Health and Safety Code Section 25187
Roseville, California	)	
	)	
Respondents.	)	
_____	)	

The California Department of Toxic Substances Control (Department) and Traynor's Painting and Decorating, Inc. and Robert N. Traynor (Respondents) enter into this Consent Order and agree as follows:

1. Site. Respondents generate, handle, treat, store, and/or dispose of hazardous waste at various locations.
2. Jurisdiction. Section 25187 of the Health and Safety Code authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.
3. A dispute exists regarding the alleged violations.
4. The parties wish to avoid the expense of litigation and to ensure prompt compliance.
5. Jurisdiction exists pursuant to Health and Safety Code section 25187

6. Respondent waives any right to a hearing in this matter.

7. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

8. Respondent does not admit the violations alleged below, except as follows: Respondent admits the facts alleged below for the purposes of any subsequent action brought pursuant to the Hazardous Waste Control Law, Health and Safety Code section 25100 et seq., within 5 years of the date the violations occurred.

9. The Department alleges the following violations:

9.1. Respondents violated Health and Safety Code, section 25189.2, subdivision (c), in that on or about the date and places set forth below, Respondents, and each of them, disposed, or caused the disposal, of hazardous waste at a point which is not authorized according to the provisions of Health and Safety Code, Chapter 6.5:

(a) Pacific Bell property:

- (1) Auburn, California, December 4 - 7, 2000;
- (3) Knights Ferry, California, August 16, 17, 26, 27, 2000;
- (4) Marysville, California, November 8 - 10, 13, 14, 22, 28, 2000;
- (5) Biggs, California, November 15 - 17, 2000;
- (6) 24th & S Streets, Sacramento, California, September 1997;
- (7) Bangor, California;
- (8) Yuba City, California;

- (9) Fair Oaks, California;
- 10) Stockton, California, 1999-2000;
- (11) Downeyville, California] 1999-2000;
- (12) Red Bluff, California, 1999-2000.

(b) Other:

1105 Woodglen Court, Roseville, California, home of Robert Traynor.

#### SCHEDULE FOR COMPLIANCE

10. Respondents shall comply with the following:

10.1.1. Effective immediately, Respondents, and each of them, shall only dispose of hazardous wastes in accordance with the requirements of Health and Safety Code, chapter 6.5, and California Code of Regulations, title 22.

10.1.2. Effective immediately, Respondents, and each of them, shall notify the Department of each and every instance in which it fails to comply with paragraphs 10.1.1 above. Such notification shall be in writing, mailed within 30 days of the failure to comply, and addressed to the person identified in paragraph 10.2 below.

10.2. Submittals. All submittals from Respondent pursuant to this Consent Order shall be sent to:

Charles Stone  
Department of Toxic Substances Control  
Criminal Investigations Branch  
8800 CalCenter  
Sacramento, CA 95826

10.3. Communications. All approvals and decisions of the Department

made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

10.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

10.5. Compliance with Applicable Laws, Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.6. Endangerment during Implementation. In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this

section shall be extended for the term of such Stop Work Order.

10.7. Liability. Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.8. Site Access. Access to the Site, that Respondent has the ability to provide, shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

10.9. Sampling, Data, and Document Availability. Respondent shall permit the Department and its authorized representatives to inspect and copy all

sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

10.10. Government Liabilities. The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

10.11. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the

Department.

10.12. Extension Requests. If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

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10.13. Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

#### PAYMENTS

11.1. Respondent shall pay the Department a total penalty of \$32,500, which includes \$25,000 as reimbursement of the Department's costs and \$7,500 in the form of a supplemental environmental project described at Attachment A to the Consent Order, which Attachment A is incorporated herein as if fully set forth at this place.

11.2. The penalty shall be reduced by \$5,000 if, and only if, Respondent attends, or sends at least one employee to, the California Compliance School, Modules I - V, and submits to the Department, within 180 days of the effective date of this Consent Order, a Certificate of Satisfactory Completion thereof.

11.3. In the event that the above Certificate of Satisfactory Completion is not all received by the Department within 180 days of the effective date of this Consent Order, the entire remaining balance of \$5,000 shall then become due and payable.

11.4. The remaining balance of \$20,000 shall be payable in thirty-six

monthly installments of \$555.55 and one final installment of \$555.75. The first such payment shall be due on the first day of first calendar month following the effective date of this Consent Order. Each subsequent payment shall be due on the first day of each successive month until paid in full. In the event that any payment is not received at the address set forth below on or before the tenth day of the month in which it is due, the entire remaining balance shall become due and payable immediately.

11.5. Respondents' check(s) shall be made payable to Department of Toxic Substances Control, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control  
Accounting Office  
1001 I Street, 21st floor  
P. O. Box 806  
Sacramento, California 95812-0806

11.6. If Respondent fails to make any payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

#### OTHER PROVISIONS

12.1. Additional Enforcement Actions. By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance. Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages



for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

12.3. Parties Bound. This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date. The effective date of this Consent Order is the date it is signed by the Department.

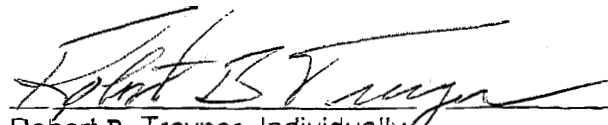
12.5. Integration. This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement,

12.6. Compliance with Waste Discharge Requirements. Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

12.7. Notice of Disposal. Respondent shall, by certified mail, return receipt requested, notify the following persons of the violation alleged in paragraph above:

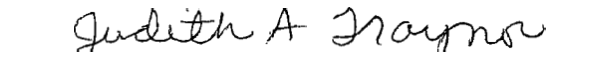
Notices under this paragraph are subject to paragraph 10.2.

Dated: 6-25-03


  
Robert B. Traynor, Individually.

Traynor's Painting and Decorating, Inc.

Dated: 6/25/03

  
BY: Judith Ann Traynor, President

Dated: 06/27/03

  
Mike Berriesford  
Supervising Investigator  
Criminal Investigations Branch  
Department of Toxic Substances Control

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## ATTACHMENT A

- I. A. Respondent shall volunteer with the County of Sacramento and/or any City therein to paint, at his own expense, approved warnings against illegal dumping on not less than 100 storm drains; and,
- B. Respondent shall volunteer with the County of Placer and/or any City therein to paint, at his own expense, approved warnings against illegal dumping on not less than 100 storm drains.
- II. A. Respondent shall write five articles (minimum length 1000 words) dealing with the handling of paint waste, lead based paint and use of a power washer to removed paint to be published and/or distributed by an appropriate company or organization, including, without limitation:
  - 1. Painting and Decorating Wall Covering Association
  - 2. Painting and Decorating Contractors of America (both State and Local organizations)
  - 3. State Compensation and Insurance Fund (how to prevent worker injuries with lead based paint)
  - 4. Contractors State Licensing Board
  - 5. Major paint companies (e.g., Kelly-Moore / Sherwin Williams).
- B. Prior to submission of any article, Respondent shall comply with paragraphs 10.2 and 10.4 of this Consent Order. Unless otherwise excused by the Department for good cause, compliance with this Item III requires the actual publication of five substantially different articles.

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Respondent shall complete and provide evidence of completion of Item I above within 180 days of the effective date of this Consent Order. Respondent shall complete and provide evidence of completion of Items II and III within three years of the effective date of this Consent Order. In the event that respondent shall fail to provide proof of completion of any Item as set forth herein, the entire sum allocated to Supplemental Environmental Projects by this Consent Order shall become due and payable immediately.